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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

NFC Collections LLC,

Plaintiffs,

v.

Helsing Releasing, LLC, Helsing
Production Inc., Insight Film Studios,
Ltd., Kirk Shaw, and Bank Leumi
USA,

Defendants.

Case No. 2:13-cv-07264-R-PJW

**FINDINGS OF FACT AND
CONCLUSIONS OF LAW ON
PLAINTIFF NFC COLLECTIONS
LLC'S MOTION FOR PARTIAL
SUMMARY JUDGMENT**

1 The Court, the Honorable Manuel L. Real presiding, having considered
 2 Plaintiff NFC Collections LLC's Notice of Motion for Partial Summary Judgment,
 3 Memorandum of Points and Authorities in support thereof, the concurrently filed
 4 Proposed Statement of Uncontroverted Facts and Conclusions of Law, the
 5 concurrently filed Declaration of Erin E. McCracken and exhibits thereto,
 6 Defendant Bank Leumi USA's ("Bank Leumi") opposition papers, and the relevant
 7 pleadings and papers on file with the Court, and having fully considered the law
 8 and the facts, hereby makes the following findings of fact and conclusions of law.

9 **FINDINGS OF FACT**

10 1. Newbridge Film Capital LLC ("Newbridge") is a specialty finance
 11 company engaged primarily in the business of providing loans to independent film
 12 producers.

13 2. Plaintiff NFC Collections LLC ("NFC") is the successor in interest to
 14 Newbridge with respect to the claims and interests alleged by NFC in this action.

15 3. Defendant Bank Leumi USA ("Bank Leumi") is an indirect subsidiary
 16 of Bank Leumi le-Israel B.M., an Israeli corporation.

17 4. In 2008, Bank Leumi and Newbridge each made secured loans to
 18 Helsing Releasing LLC ("Helsing Releasing") and Helsing Productions Inc.
 19 ("Helsing Productions" and, together with Helsing Releasing, "the Helsing
 20 Entities") to help finance an independent parody horror film entitled Stan Helsing
 21 ("Stan Helsing" or the "Film").

22 5. On or about September 30, 2008, Bank Leumi entered into a Loan and
 23 Security Agreement (the "Leumi Loan Agreement") with the Helsing Entities
 24 pursuant to which it agreed to lend up to Five Million Five Hundred and Five
 25 Thousand Dollars (\$5,505,000) (broken into United States and Canadian dollars), to
 26 fund the production, completion and delivery of the Film (the "Leumi Loan").

27 6. Under the Leumi Loan Agreement, the Helsing Entities granted Bank
 28 Leumi a security interest (the "Leumi Security Interest") in and to, *inter alia*, the

1 Film, all accounts and deposit accounts associated with the Film, all revenues,
 2 income, proceeds and profits derived from the production, release, sale, broadcast,
 3 transmission, reproduction or other exploitation of the Film, all cash, cash
 4 equivalents, notes or negotiable instruments evidencing a right to the payment of
 5 money, all rights to the Canadian Tax Credits and all proceeds of the foregoing
 6 (collectively, the “Collateral”).

7 7. On or about September 30, 2008, Newbridge entered into a Loan and
 8 Security Agreement with the Helsing Entities (the “Newbridge Loan Agreement”)
 9 pursuant to which it agreed to lend up to Three Million Four Hundred Thousand
 10 Dollars (\$3,400,000) to fund the production, completion and delivery of the Film
 11 (the “Newbridge Loan”). The Leumi Loan Agreement was patterned after the
 12 Newbridge Loan Agreement, including, for example, similar conditions to the
 13 closing of the Loans, such as acceptable collateral, deposits from distributors, etc.

14 8. Under the Newbridge Loan Agreement, the Helsing Entities granted
 15 Newbridge a security interest (the “Newbridge Security Interest”) in and to the
 16 Collateral.

17 9. In or about 2009, Kirk Shaw, a Canadian-based independent film
 18 producer, produced the Film through Insight Film Studios Ltd. (“Insight”) and the
 19 Helsing Entities, all independent film production or post production services
 20 companies affiliated with Kirk Shaw.

21 10. The Film qualified for Canadian federal and provincial tax credits
 22 (collectively, the “Canadian Tax Credits”) that, according to Shaw, had a value in
 23 excess of \$1,000,000.

24 11. On or about September 30, 2008, Newbridge and Bank Leumi entered
 25 into an Intercreditor and Subordination Agreement (the “Intercreditor Agreement”)
 26 that, *inter alia*, defined the rights and obligations of the respective lenders with
 27 regard to the Collateral and prescribed the manner in which proceeds derived from
 28 the Film would be divided and applied between them.

12. Paragraph 3(b) of the Intercreditor Agreement provides, in part, as follows: “Except as set forth in Section 4(d) below, the Newbridge Obligations are and shall be subordinate and junior in right of payment, to the extent and in the manner herein set forth, to the prior payment in full of the Leumi Obligations. . . . [A]ny payment of principal of, or interest on, the Loans or any other amounts with regard to any Newbridge Indebtedness received or collected by Leumi (or Newbridge) shall be allocated first entirely to the Leumi Indebtedness until the Leumi Repayment Date and only thereafter allocated to the Newbridge Indebtedness.”

13. Under the Intercreditor Agreement, Bank Leumi was appointed as Collateral Agent for Leumi and Newbridge.

14. Paragraph 10 of the Intercreditor Agreement provides, in part, as follows: “The Borrower [Helsing Releasing, LLC and Helsing Productions Inc.] and Newbridge agree, and Leumi hereby acknowledges that, to the extent that Leumi holds, or a third party holds on its behalf, physical possession of or ‘control’ (as defined in the Uniform Commercial Code) over Collateral (including any securities accounts, deposit account and the Collection Account) pursuant to the Leumi Loan Documents, such possession or control is also for the benefit of Newbridge, and Leumi is hereby appointed as collateral agent for Newbridge solely to the extent required to perfect the Newbridge Security Interest in such Collateral. After the Leumi Repayment Date, Leumi shall promptly deliver to Newbridge (or a third-party designated by Newbridge), at the Borrower’s sole cost and expense, the Collateral in its possession or control together with any necessary endorsements to the extent required by the Newbridge Loan Documents.”

15. On December 3, 2012, counsel for Bank Leumi informed counsel for Kirk Shaw via e-mail that, as of December 4, 2012, “the Bank’s [Leumi] payout amount is \$504,296.23.”

16. As of December 14, 2012, the Leumi Loan balance was then CAD

1 \$336,289.20 less a cash reserve held by the Bank of CAD \$3,679.45, for a total
2 balance of CAD \$332,609.75.

3 17. On December 19, 2012, Bank Leumi received CAD \$501,728.07 via
4 wire transfer from Kirk Shaw. Bank Leumi therefore received CAD \$169,118.32
5 more than the outstanding balance on the Leumi Loan.

6 18. On December 21, 2012, Bank Leumi sent a Leumi Termination Notice
7 re: “Stan Helsing” to Newbridge and NFC, which provides, in part, as follows:

8 19. “This letter shall serve as the ‘Leumi Termination Notice’ pursuant to
9 the Intercreditor Agreement. . . . Please note that Leumi has reserved
10 approximately \$120,000 for anticipated legal costs Leumi may incur as a result of
11 Newbridge threatening to bring legal action against Leumi for alleged breaches of
12 the Intercreditor Agreement. If this threat of litigation would be removed by
13 Newbridge giving to Leumi a full release from liability with respect to the
14 financing of ‘Stan Helsing’, Leumi would release this legal reserve to Newbridge.”

15 20. Bank Leumi never distributed any funds to Newbridge to reduce any
16 part of the balance of principal or interest owing under the Newbridge Loan
17 Agreement.

18 21. Bank Leumi retained the CAD \$169,118.32 on the claim that the
19 Intercreditor Agreement entitled it to withhold these funds as advances of
20 attorneys’ costs to defend against any claims NFC might bring against Bank
21 Leumi.

22 22. Despite timely demand, the Borrower has not paid any portion of
23 principal or interest owed under the Newbridge Loan Agreement.

24 **CONCLUSIONS OF LAW**

25 The Court makes the following conclusions of law:

26 1. Newbridge, NFC’s predecessor-in-interest with respect to this claim,
27 and Bank Leumi entered into the Intercreditor Agreement, dated September 30,
28 2008 (the “Intercreditor Agreement”), which is a mutually enforceable, binding

1 contract

2 2. Newbridge, NFC's predecessor-in-interest with respect to this claim,
3 fully performed its obligations under the Intercreditor Agreement.

4 3. Bank Leumi's failure to promptly pay over to Newbridge the CAD
5 \$169,118.32 collateral collected from the borrower after the Bank Leumi loan was
6 paid in full constitutes an unexcused, material breach of Section 10 of the
7 Intercreditor Agreement, which required Bank Leumi to promptly pay over such
8 amounts to Newbridge upon termination of the Bank's duties as collateral agent,
9 entitling NFC to recover breach of contract damages and interest thereon.

10 4. There exists no reasonable interpretation of the loan agreements that
11 enabled Bank Leumi to create a reserve for legal fees and thereby withhold
12 payment from NFC as required under the Intercreditor Agreement.

13 5. Bank Leumi's breach of the Intercreditor Agreement caused NFC to
14 incur actual damages in the amount of CAD \$169,118.32 plus interest thereon.
15 Under California Code of Civil Procedure section 3287(a), interest is calculated at
16 10 percent per annum and runs from the date of the breach, December 22, 2012, to
17 the date of Court's Order granting partial summary judgment in favor of NFC.
18 Accordingly, the interest due and owing is CAD \$29,282.95.

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21 IT IS SO ORDERED.

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23 Dated: October 16, 2014



Judge Manuel L. Real
United States District Court Judge